such assignments. This is not intended to eliminate the right to grieve a combined posting under the Collective Agreement.

2. The District agrees to consult and receive input from the Association prior to the District requiring new levels of qualification for existing courses or positions.

...

4. The parties agree the Soccer Academy course at Brocklehurst Middle School may be posted in the future with the requirement of the appropriate level of soccer coach certificate. The parties further agree that for the Marra grievance arbitration regarding the May 17, 2010 posting, the Association will not contest the terms of the posting as written.

...

6. Except as set out herein, this settlement constitutes a full and final resolution to the Postings (necessary qualifications) grievance, filed July 4, 2010 (BCTF File No. 73-2010-0009) and is without prejudice to grievances currently in issue between the parties or with respect to future postings or any other District or the local association.

This settlement agreement was executed on the 7th of December, 2011 by representatives for the district and the association.

In the settlement agreement, the association confirmed that they would not contest the inclusion of the appropriate level of soccer coach certificate in the relevant postings and would not contest the terms of the posting in the Marra grievance. Nevertheless it is I find still open to the association notwithstanding the settlement agreement, to argue that the grievor Marra had sufficient training and coaching experience without the CCS designation to establish a reasonable expectation that he would be able to perform satisfactorily the duties of the position.

III. Discussion and Conclusion

The positions of the parties in this matter were relatively straightforward. The position of the association was that the crucial question which the district should have addressed when awarding the relevant position, was whether or not the grievor had the necessary qualifications as defined in Article C.3 1.a. (above quoted). It was

wrong to focus on the narrow question of whether or not the grievor held a Community Coach Senior designation and treat that as providing a definitive answer as to whether or not the grievor was able to perform the duties of the position in a satisfactory manner. The association's position was that it was possible to establish a reasonable expectation that the grievor would be able to perform the duties of the position in a satisfactory manner. Accordingly he had the "necessary qualifications" under Article C.3.1.a. The absence of the formal Community Coach Senior designation or certification was not fatal to his application, and he should be awarded the position.

The position of the district was that it was entitled to set reasonable standards or requirements for the position. The specific settlement agreement expressly permitted the district to include Community Coach Senior designation as a requirement for the position. This underlined the fact that the parties accepted this requirement as a reasonable requirement, reasonably related to the job description in the posting. However even ignoring the lack of CCS designation and looking more broadly at his ability to perform the job, the grievor's skills and experience fell short of what was required to create a reasonable expectation that he could perform the duties of the position in a satisfactory manner.

Mr. Anderson in his argument submitted that the district's application of the selection process must be reviewed on the standard of correctness. Seniority is an important principle in the parties' collective agreement, as it is in many collective agreements, and arbitrators have required districts to be correct when applying those collective agreement provisions which impact the most fundamental of the worker's rights.

He referred me to a number of authorities supporting this principle including *HLRA of BC (Princeton General Hospital) v. BCNU,* [1987] B.C.C.A.A.A. No. 361 (Hope); *Vancouver Teachers' Federation and BC District No. 39*, [1997] B.C.C.A.A.A. No. 345

(Dorsey); *BCPSEA and BCTF (Devine Grievance)*, [1998] B.C.C.A.A.A. No. 83(Bruce). I have no disagreement with any of the principles set out therein.

Mr. Anderson also referred me to *Brown and Beatty* 4th Edition, Section 6:3320 for the proposition that even if an applicant does not have the necessary qualifications when exercising recall rights, then he or she is entitled to consideration as to whether there is a reasonable expectation that he or she could perform the duties in a satisfactory manner. If there is, the applicant has met the threshold and as the most senior applicant he or she is entitled to the position.

> Arbitrators are agreed that in the appropriate circumstances employers may legitimately require employees who seek particular jobs to have a certain level of educational standing, government papers or practical experience. However, if an employee is able to demonstrate that his or her personal qualifications and abilities are such that he or she can do all the work competently, without the requisite academic standing or experiential qualification, the employee will be entitled to the job. In such cases arbitrators have to evaluate the equivalency of different qualifications in order to determine whether the employee meets a substantial requirement of the job.

Mr. Anderson referred to *Cape Breton District Health Authority No. 8 and CAW – Canada, Local 4600 and 4603 (MacDonald)*, 2003 N.S.L.A.A. No. 29 (Veniot) at paragraphs 43 – 45 : The arbitrator first referred to the right of the district to set the qualifications for the position, as the first of two important values. He then went on as follows:

> The second is the place if any in this exercise for the consideration of equivalent qualifications. The notion of equivalency refers to the idea that what counts is the existence in an applicant, at the time of an application, of the ability actually, and adequately, to perform the job's duties, and not the source of that capacity.

Mr. Anderson went on to cite a number of cases supporting the proposition. It is not necessary for me to refer to these cases in detail and the principle described is one which I wholeheartedly endorse and support. These cases include the *British Columbia Public School Districts' Association v. BCTF (Allen Grievance),* [2007] B.C.C.A.A.A. No. 18 (Kinzie) and *Delta District v. Canadian Association of Public Employees, Local 1091 (Fuller Grievance),* [1994] B.C.C.A.A.A. No. 393; 46 LAC(4th)

216; *Kamlooops- Thompson District No. 73 v. BCTF (Byrne Grievance),* [2001] B.C.C.A.A.A. No. 196 (McEwen).

Mr. Anderson argued that the evidence discloses that the district representatives simply disqualified the grievor on the grounds that he did not hold a Community Coach Senior designation and for that reason alone he was not eligible or qualified for the entire assignment. I do not agree with this characterization of the district's decision process. Although the correspondence tends that way it was clear from evidence at the hearing that Mr. Churchley did not take a mechanistic view of the grievor's lack of Community Coach Senior designation and examined the matter on a broader front, as I indicated in my review of his evidence earlier.

Turning then to the central issue in the case: The grievor was well qualified for the technical education aspects of the position. He also had level three coaching theory for wrestling, which it was conceded by the district, was very similar to level three theory within the Community Coach Certificate level in soccer. However the disputed area was the practical and technical soccer coaching skills and abilities taught at the BC Soccer clinics, whether 2 days (CCS) or 5 days (Community Coach Certificate).

It is apparent from the evidence that as a soccer coach the grievor was self-taught. By his own admission he had received no instruction in coaching soccer from anyone. As a top flight amateur player he would have been the recipient of a great deal of coaching and would have developed high skill in the sport but that is not the same thing as being a soccer coach. This is emphasized in the BC Soccer booklet including the comments in two of the extracts I have quoted earlier and I agree with them.

In order for the district to have a reasonable expectation that he could perform the soccer coaching duties associated with the job, in the absence of a Community Coach Senior designation there would need to be some other persuasive evidence of an appropriate level of knowledge skill and ability as a soccer coach.

The association relied quite heavily on the grievor's experience coaching at Barriere Secondary for two years (four seasons). I was referred to a number of cases which assert that previous experience in the subject position renders it hard for an employer to claim that the applicant lacks the necessary qualifications for the position. See for example: *Re Corporation of the District of Surrey and CUPE Local 402,* 1977 BCCAAA No. 19 (Larson, Trevino, and Macdonald) at para 15, where this was stated:

> ...It is presumptuous to assert where an employee has already functioned in the position in dispute (even if only on a temporary basis) that he is unqualified. A heavy onus rests on an employer in such circumstances to show conclusively that the employee cannot perform in a permanent position.

Similarly in *BC WCB v WCB Employees Association (Young Greivance)* 1989 BCCAAA No 593 (Hope) this was stated:

> ...An employee who has worked for a lengthy period of time in a classification must be seen prima facie as having the abilities and qualifications to perform in positions falling within the classification. Where the employer seeks to discount that experience in a job competition, the onus is upon it...

These cases and authorities are sound but their application to the present facts needs to be examined carefully: Most bargaining unit positions involve some element of oversight or supervision.. At very least there will usually be some method or process of evaluation of performance in those positions however informal. In those circumstances occupation of the position even temporarily without adverse comment or consequence is an indication that the duties of the position have been carried out satisfactorily and will support an application for the same or a similar permanent position. There is in such circumstances an express or sometimes implied endorsement of the ability of the applicant to perform the duties of the position.

The circumstances here are quite different: Even assuming in the grievor's favour that soccer coaching at Barriere Secondary amounts to the same position as coaching the Soccer Academy at Brocklehurst, the fact is that it was the grievor himself and an

uncredentialed colleague who initiated the soccer program at Barriere Secondary. There was no evidence that he occupied a coaching position which reported to a qualified or certified soccer coach/organizer. He shared his coaching duties with his colleague Dennis who was also without any certification or BC Soccer designation. There was no evidence that they reported to anyone or were overseen by anyone as far as the practical or technical soccer coaching aspects of the program were concerned.

Thus completion of these coaching assignments carries very little weight in terms of establishing their ability to perform in a satisfactory manner. No supervision or monitoring or evaluation of the grievor's coaching performance was described or referred to in the evidence, nor was there any evidence of some implied endorsement of his coaching abilities or methods by anyone qualified or credentialed.

In his description of other soccer coaching activity including with his daughter's team and also as player coach in intra mural soccer there was also no reference to any evaluation or endorsement or even observation of his coaching skills or methods by other qualified or credentialed coaches.

I do not mean to disparage the grievor as a soccer coach and he may indeed be a very good one, but in a process of this nature there must be something concrete to go on in terms of establishing equivalency. Neither the district nor I as arbitrator were given the means of assessing the extent and quality of his self-taught soccer coaching skills and methods. Further I did not have the evidentiary tools from which conclude if he used correct or acceptable soccer coaching methods aligned to those promulgated by BC Soccer and the Canadian Soccer Association.

It is clear that these are the organizations whose standards the district wishes to trust, and is entitled to trust, in the process of educating and developing its soccer Academy students. The grievor certainly described a number of drills and exercises he supervised and other soccer coaching activities he was involved in but at the

hearing there was no comparison of these activities and methods against BC Soccer or Canadian Soccer Association standards.

Mr. Anderson says the district should have supplied any deficiency in the grievor's application and challenge material before reaching any conclusion. In this, I believe he goes too far. There is some onus on the applicant especially when lacking an agreed qualification in the posting, to demonstrate how he/she has the necessary qualifications to perform the duties of the position. But even if I am wrong in this, it appears that no further reasonable amount of enquiry by the district would have made up the key gaps or deficiencies above described in the tools or materials from which to evaluate this.

I should be clear that this emphasis on some level of endorsement from someone qualified or credentialed who is likely not a member of regular staff at the school would not typically arise when evaluating equivalency for most applications for vacant positions within the school district. There is usually a department head who has strong knowledge of the subject matter to be taught who can evaluate each applicant appropriately and either support or not support an application accordingly. However in a specialized activity like teaching at the Soccer Academy the applicant without the required credentials needs to satisfy the district somehow, and in doing so may have to call on the expertise and experience of persons outside the scope of the regular staff who are knowledgeable about his skills and experience. This is of course rendered unnecessary when the applicant already has the desired external credentials. But when evaluating equivalency, in the absence of endorsement express or implied from such outside qualified persons the applicant will likely have an uphill battle, as turns out to be the case here.

I do not say there could be no other ways of demonstrating equivalency. Purely by way of example, proof of success in competition for a team coached by the applicant might help. Even then a question might arise as to whether the success was obtained

by inappropriate training and techniques not approved of by the two soccer Associations referred to earlier.

The grievor himself appears now to be taking the BC soccer clinics and working through the certification process. This is sensible. While in some respects the case is not on point, the comments of arbitrator Munroe in *Nelson (City) v IBEW, Local 1003 (Raschdorf Grievance)* are apt in this context:

> Undoubtedly, some uncertified journeymen are equal or superior to some certified journeymen. A recognized certificate is not a guarantee of a particular skill level. But surely it is the most consistently reliable indicia of the full range of theoretical knowledge, as well as being evidence of a measure of practical experience...

In summary, I am not persuaded that the district was in breach of the collective agreement when it rejected the grievor's application for the position. The grievance is dismissed.

IT IS SO AWARDED.

Nicholas Glass

Nicholas Glass, Arbitrator. March 12, 2012

RECALL GRIEVANCE

(73 002.2011)